

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

MELHER TRANSPORT, INC.,
1042 Humble Place
El Paso, TX 79915

: CASE No. 1:21-cv-202

•

: Judge

$$\vdots$$

AND

$$\vdots$$
$$\vdots$$

CONEXION LOGISTICS LLC,
142 Humble Place
El Paso, TX 79915

$$\vdots$$
$$\vdots$$
$$\vdots$$
$$\vdots$$

Plaintiffs,

•

$$\vdots$$

V.

$$\vdots$$

COMPLAINT

$$\vdots$$

WESTFALL TOWING LLC,
1020 Pike Street
Marietta, OH 45750

$$\vdots$$

•

•

SERVE:

$$\vdots$$

Travis Westfall, Agent

$$\vdots$$

1020 Pike Street

$$\vdots$$

Marietta, OH 45750

•

•

Defendant.

:

PARTIES

1. Melher Transport, Inc. is a Texas corporation with its headquarters and principal place of business in El Paso, Texas. It operates commercial trucks under U.S. Dept. of Transportation #01016698.

2. Conexion Logistics LLC is a Texas corporation with its headquarters and principal place of business in El Paso, Texas.

3. Defendant Westfall Towing LLC (“Westfall”) is an Ohio limited liability corporation with its headquarters and principal place of business in Marietta, Ohio.

4. Upon information and belief, Travis Westfall is an agent of Westfall Towing LLC.

JURISDICTION AND VENUE

5. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. This Court has *in personam* jurisdiction over Westfall because this case concerns their actions in wrongfully withholding property in Marietta, Ohio.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because this is the judicial district in which Westfall's actions in wrongfully withholding the property that gives rise to Melher Transport's claims in this matter occurred.

BACKGROUND FACTS

8. Conexion Logistics LLC owns a 2020 International LT Series semi-truck with Vehicle Identification Number 3HSDZAPR0LN287053 (the "2020 International LT").

9. Conexion Logistics LLC owns a 2001 Utility TL semi-truck trailer with Vehicle Identification number 1UYVS25301C477818 (the "2001 Utility TL semi-truck trailer").

10. Melher Transport, Inc. leases the 2020 International LT from Conexion Logistics LLC.

11. Melher Transport, Inc. was hired to transport approximately fourteen packs of poplar lumber (the "lumber") by Baillie Lumber Co. Accordingly, Melher Transport, Inc. has a possessory interest in the lumber.

12. On November 20, 2020, Melher Transport was operating the 2020 International LT and 2001 Utility TL semi-truck trailer while transporting the lumber from Marietta, Ohio to El Paso, Texas.

13. During travel on southbound State Route 7, the lumber shifted forward and breached the front of the 2001 Utility TL semi-truck trailer.

14. The 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber were deemed inoperable at the scene by a police officer.

15. Westfall Towing LLC took possession of the 2020 International LT and 2001 Utility TL on November 20, 2020 by towing and storing the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber.

FIRST CAUSE OF ACTION - REPLEVIN

16. Melher Transport, Inc. has requested return of the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber on numerous occasions.

17. Westfall Towing LLC has rejected Melher Transport, Inc.'s requests for the return of the 2020 International LT and 2001 Utility TL semi-truck trailer and in doing so, has refused their return.

18. Westfall Towing LLC has failed to return the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber.

19. Upon information and belief, the 2020 International LT and 2001 Utility TL are in the actual possession of Westfall Towing LLC and is located at 1024 Pike Street, Marietta, OH 45750.

20. The 2020 International LT being held by Westfall Towing LLC is worth approximately \$100,000.

21. The 2001 Utility TL semi-truck trailer being held by Westfall Towing LLC is worth approximately \$5,000.00.

22. The lumber contained within the 2001 Utility TL semi-truck trailer being held by Westfall Towing LLC is worth approximately \$9,394.38.

23. Melher Transport, Inc. and Conexion Logistics LLC request return of the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber under Ohio Revised Code § 2737 *et seq.*

SECOND CAUSE OF ACTION - CONVERSION

24. Melher Transport, Inc. and Conexion Logistics LLC had a right to possess the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber on November 20, 2020.

25. Westfall Towing LLC has wrongfully exerted control of the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber.

26. Despite Melher Transport, Inc.'s demands for return of the property, Westfall Towing LLC has wrongfully refused to return 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber to Melher Transport, Inc.

27. Melher Transport, Inc. and Conexion Logistics LLC have suffered damages as a result of Westfall Towing LLC's wrongful exertion of control and refusal to return the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber.

28. Westfall Towing LLC has converted the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber.

THIRD CAUSE OF ACTION – CIVIL THEFT

29. Melher Transport, Inc. and Conexion Logistics LLC seek to recover their attorney fees and treble, punitive, and/or exemplary damages against the Westfall Towing LLC for criminal theft offenses under Ohio Revised Code §2307.60 and §2307.61 and Title 29 of the Ohio Revised Code.

30. Westfall Towing LLC has retained the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber of which Conexion Logistics LLC and Melher Transportation, Inc. owns or controls by right of possession, beyond the scope of Conexion Logistics LLC or Melher Transport, Inc.'s express or implied consent. Melher Transport, Inc. has no objection with paying the reasonable value of Westfall Towing LLC's services in connection with the tow as required by quantum meruit. However, Westfall Towing LLC has made false representations with respect to the amount of vehicles, personnel, hours, and market value of the services rendered in connection with the tow. These representations resulted in an invoice which deceptively exaggerates the value of the towing services. Further, Westfall Towing LLC purports to exact excessive charges with respect to daily amounts for storing a truck, trailer, and cargo, refusing to release at a reasonable value.

31. An agent for Westfall Towing LLC has made multiple phone calls to Melher Transport, Inc. and to its insurer, Licona Insurance, threatening that it would seize and sell the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber, despite its lack of any right to do so. Westfall Towing LLC expressly and impliedly represented on several occasions that these threatened actions were permitted by law and that the exorbitant costs charged represented market value. These acts constitute threats, deception and intimidation.

32. Travis Westfall, an agent for Westfall Towing LLC, called Miguel Melendez, an agent for Melher Transport, Inc., on several occasions. In these phone calls, Mr. Westfall repeated that the full amount of the invoice was due and that storage costs were increasing rapidly and would culminate in Westfall Towing LLC's seizure of the 2020 International LT.

33. On several occasions, Travis Westfall has called Licona Insurance and made statements at length about how the towing charges are accurate and lawful and that failure to pay

the requested charges would result in Mr. Westfall selling or taking ownership of the 2020 International LT. Mr. Westfall represented that he had sent notices necessary to take possession of the 2020 International LT and demanded the title to the 2020 International LT.

34. These phone calls demonstrate Westfall Towing LLC's scheme to defraud Melher Transport, Inc., which started with the invoice and unlawful retention of the 2020 International LT. Westfall Towing LLC has attempted and continues to attempt to obtain by deception a benefit to which it is not entitled to the detriment of Melher Transport, Inc. The several phone calls constitute dissemination or transmission signals and sounds to further the scheme to defraud.

35. By virtue of these criminal acts of Westfall Towing LLC, Melher Transport, Inc. has been damaged and is entitled to attorney fees, punitive or exemplary damages, and triple damages under Ohio Revised Code § 2307.60 and § 2307.61.

REQUEST FOR RELIEF

Melher Transport, Inc. and Conexion Logistics LLC request that the Court order the following relief:

- A. Find that Conexion Logistics is the owner the 2020 International LT and 2001 Utility TL semi-truck trailer in question;
- B. Order Westfall Towing LLC to return the 2020 International LT and 2009 WANC2001 Utility TL semi-truck trailer containing the lumber to plaintiffs;
- C. If the property cannot be returned to plaintiffs, order Westfall Towing LLC to pay \$114,394.38 for conversion of the 2020 International LT and 2001 Utility TL semi-truck trailer containing the lumber.
- D. Grant plaintiffs costs; and
- E. Grant any other relief that may be just or equitable.

Respectfully submitted,

/s/ Andrew M. Lehmkuhl

ANDREW M. LEHMKUHL II

PORTER RENNIE WOODARD KENDALL, LLP

3602 Eastern Avenue

Cincinnati, Ohio 45226

(513) 768-5235

(513) 768-9243 (fax)

Email: dlehmkuhl@porterrennie.com

Attorney for Plaintiffs